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No. 86-1833

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

BERMAN J. WATTS JR., Petitoner,

v.

GENERAL TELEPHONE AND ELECTRONICS COMPANY OF THE SOUTHEAST, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

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The petitioner Berman J. Watts, Jr. replys to respondent's brief in opposition to the Petition for Writ of Certiorari respectfully requesting that that this Court deny such briefs request that the petition be denied.

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No authorities are cited in this reply to the brief in opposition due to the nature of the argument (error of finding of fact).Applicable citation is included in the argument of the original Petition for writ of Certiorari.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITON TO PETITION FOR CERTIORARI

I.The Eleventh Circuit's Decision Does not Conform to the Clearly Erroneous Standard

In defending the second contention that the Eleventh Circuit's decision conforms to the "Clearly Erroneous" standard, respondent's "review of the evidence" includes unreasonable assumptions and facts not in evidence and ommits relevant evidence crucial to accurate factual determinations.

1.Respondent states that, a lack of candor is compounded by the submission of a amplified resume, after submission of employment application to GTE. Only the back of the double sided resume sheet,marked "Amplified Resume" is cited as DX 4.The front of that resume sheet, along with the name and address normally submitted on resumes is seperated as DX 2. Such seperation permits the presentation of the "Amplified Resume" alone rather than the original doublesided document.

On that back is stamped the name of the agency supplying such resume from applicant to company.Before filling out an application for employment with GTE the neccesities of business and reason would dictate that the resume was made available. No evidence is offered that the resume followed the application nor is their any reason to assume that such reversal of cause and effect should have occured.

A premeditated lack of candor, or lying would require that the resume be prepared after leaving prior employment for exclusively different reasons and after application to GTE.No such evidence is offered and the conclusion stated assumes facts not in evidence.

2.Respondent contends that petioner's response to an initial appraisal (DX. 14) demonstrates traits of a caustic, defensive approach to others and that the immediate response to all "constructive criticism" is that it is unjust and racially motivated.Such conlcusion is based on the petitioner's analysis of the initial appraisal (DX.15).That respondent chooses to assign petitioner mythical "traits",rather than to then or now defend the factual basis of the assertions made in the appraisal and challenged by petitioner is no doubt indicative of the hopless nature of such a task. That respondent chose to "conciliate" the particular EEOC complaint involving that appraisal is uncontroverted.That the two subsequent appraisals improve on the defects of that

original appraisal is shown in comparing the three (DX 14,PX 8,PX 15).

Such improvement includes greater application of exclusive subjectively judged goals, progressive expansion of the accusation of incident based on the testimony of certain whites, and goals tailored to be negatively filled by such accusation. Also documented instances of "oral communications problems ",wholly lacking in the first appraisal are added for the subsequent ones. It is not petitioner who was "padding the record for a lawsuit" it was the well experienced organization that was preparing a defense of it's preservation of local white supremacy, after the failure of it's first and less elaborate attempt at firing. Merely pointing out that a particular attack masquerading as an appraisal is self contradictory and in conflict with reality serves as cause for the furthurance of such attack by additional negative portrayal - but not

answer of challenge or proof of the original accussations.

3.Respondent contends that it is common, based solely on testimony in conflict with contemporary documents (TR 420), for a person to be given goals to help him overcome individual weaknesses. Yet, a look at the considerable number of supervisory appraisals listing goals and entered into evidence shows no other individual had such goals in the quantity with the uniquely subjective and then unspecified criteria that were assigned petitioner after his initial complaint of discrimination(PX.25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37).

4.Respondent contends the evidenced showed all COE supervisors supervised the same craft personnel.The degree of such interchange is ignored.Occasional supervision of the regular work crew for a particular shift as business needs and senority preference dictate means that each supervisor has a regular crew that he is responsible for (TR. 435).

Moreover, W.A. Brown's work crew was as (DX 64) shows was in the five local Dothan exchanges rather than the toll center where petitioner supervised. Thus this then new black supervisor's subsequent receipt of a commendation for improving craft relations is not applicable to the Dothan Toll center where the Union leadership and high senority personnel were disproportionately represented (TR 435, 436).

5.Respondent contends that petitoner's complaint of discrimination at a subsequent local employer indicates paranoia. Again exploration and development of the factual parameters are curtailed to support negative conclusion. Respondent fails to establish their credentials for any such "professional" opinion.

Conclusion

It is true that petitioner underestimated the reluctance of potential witnessess who have repeatedly been made afraid to seek equality under law by the fate of others' who dared do so. But the record is not, as respondent contends free of corroborating evidence that petitioner was neither technically incompetent or could not communicate orally. That evidence lies not only in the very nature and timing of the accusations made and actions taken but in the carefully ignored admissions within the appraisals and the lack of internal consistency of respondent's assertions.

Virtually every objective, externally observable and documented parameter of performance listed in the goals of the two later appraisals is satisfactory and in the higher priorities - record breaking. Nor was petioner's originally internal informal greivance,supporting argument and cited evidence of the inaccuracy of the assertions made in the first (or any) appraisal denigrating performance ever directly and specifically answered.

Only after that initial appraisal and filing of EEOC complaint do the first documented instances of oral communications problems appear albeit retroactively dating back to the very day the department was entered. Afterwards such cause and the fufilling accusations grow in quantity, sophistication and scope until they cut off as if switched when the need for them no longer exists.On the two later appraisals a direct accusation of technical lack on any objectively verifiable basis is wholly lacking.The subjective opinion of the supervisor as to an undefined (until trial where differing interpetations are forthcoming) "working knowledge" is substituted for the direct accusation of prior technical inability (in the initial appraisal). That accusation rather than being acknowledged as erroneous when questioned was ignored until trial when

copious but not contemporaneously documented testimony erupted.

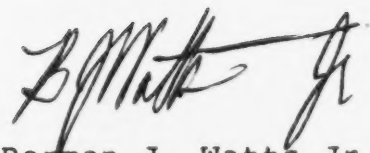
Respondent admits petitioner's design and construction of several digital programmable switches while claiming that the simplest of functions were beyond him in the initial appraisal (DX 14).Yet in the appraisals of all simarily situated employees (COE Supervisors) not one constructs any such devices, or tackles projects requiring reading and applying instruction on projects assigned petitoner, including establishing and providing written and/or electronic external reporting from new and/or hazardous operations.

Respondent's review of the evidence in supporting a rendition other than reality sets up self contradictions inconsistent with reason.Such inconsistency is compounded by the blatant intent exhibited in the increased sophistication in tactics and techniques demonstrated in each suceeding appraisal and the events surrounding them.

For these reasons the assertions of respondent constitute discrimination facilitating implausibility in justification of reprisal.Since such assertion was accepted by the trial court as "findings of fact" the Eleventh Circut's affirmation of such findings is therefore due to be found "clearly erroneous".

Based on the the foregoing reply to the brief in opposition to the Petition for Certiorari, the subject petition and the information in our papers previously filed in this matter the Petition for Writ of Certiorari is due to be granted.

Respectfully submitted,



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Certificate of Service

Three copies of the foregoing were served upon respondent by mail on June 22,1987.

Berman J, Watts Jr.

Petitioner